Supreme Court, U. S.
FILED
JUL 22 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1975.

No. 74-942.

FRANK L. RIZZO, et al.,

v.

GERALD G. GOODE, et al.,

Respondents.

HONORABLE JAMES H. J. TATE,
FRANK L. RIZZO, et al.,

v.

COUNCIL OF ORGANIZATIONS ON PHILADELPHIA
POLICE ACCOUNTABILITY AND RESPONSIBILITY, et al.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR GREATER PHILADELPHIA MOVEMENT AS AMICUS CURIAE.

FREDERIC L. BALLARD,
MICHAEL LEHR,
JAMES D. COLEMAN,
1035 Land Title Building,
Philadelphia, Pa. 19110

Attorneys for Greater Philadelphia Movement, Amicus Curiae.

Of Counsel:
BALLARD, SPAHR, ANDREWS & INGERSOLL.

International Printing Co., 711 So. 50th St., Phila., Pa. 19143 — Tel. (215) 727-8711

INDEX.

	Page
INTEREST OF THE AMICUS CURIAE	1
SUMMARY OF THE ARGUMENT	3
ARGUMENT	4
1. The District Court's Relief Is Supported by Precedent	4
2. The District Court's Order Promotes the Public Interest	5
CONCLUSION	8

TABLE OF CASES CITED.

	Page
Hague v. C. I. O., 307 U. S. 496 (1939)	5
Lankford v. Gelston, 364 F. 2d 197 (1966)	6
Millikin v. Bradey, 418 U. S. 717 (1974)	4
Swann v. Charlotte-Mecklenburg Board of Education, 402 U. S. 1 (1971)	4, 5

AUTHORITIES CITED.

	Page
Condlin, "Citizens, Police and Polarization: Are Perceptions More Important Than Facts?", 47 Journal Urban Law 653, at 657-58 (1970)	6

INTEREST OF THE AMICUS CURIAE.

This brief is filed on behalf of The Greater Philadelphia Movement (GPM), an organization of persons holding responsible positions in business, finance, organized labor, the professions, education, and civic affairs, whose goals include social, governmental and economic improvement in the Greater Philadelphia area.[1]

Our reason for filing this brief is our conviction that the injunctive relief granted in the cases here on appeal goes to the heart of effective law enforcement, i.e. public respect for the police. If the public are to respect the police, the police, in turn, must treat members of the public with respect, restraint and fairness. Not only do citizens have a right to expect such treatment, they also have a right to expect that policemen who act otherwise will be brought to account. Failure to discipline an officer who acts oppressively cannot but be taken as sanctioning police oppression.

The District Court found that members of the Philadelphia police do, on occasion, act oppressively, particularly toward black people. The Court also found that existing procedures for handling complaints of such misconduct are totally inadequate. To correct that situation, the Court ordered the police department to adopt wholly new procedures conforming to substantive standards established by the Court. The Court of Appeals for the Third Circuit affirmed the District Court's opinion.

We are not in a position to assess the correctness of the District Court's findings as to the incidents of oppression and the inadequacy of existing remedial procedures. But assuming those findings are correct, our purpose is to endorse the relief fashioned by the District Court and

---

1. GPM also filed a brief amicus curiae with the District Court in the *Goode* case, one of the two cases here on appeal, and with the Court of Appeals in both cases here on appeal.

approved by the Court of Appeals and to ask this Court to sustain that relief. We believe it appropriate for GPM to express its views on this point in order to forestall any argument that the District Court's order constitutes unwarranted judicial legislation. In our view the order is warranted, appropriate, and well within the equity power of a Federal court.

SUMMARY OF THE ARGUMENT.

The relief granted by the District Court is well within the equitable powers of the federal courts in administering the Civil Rights Act. Such relief serves to protect Philadelphia residents from unconstitutional behavior of city officials and is necessary to guarantee trust by minority groups in a vital public institution.

ARGUMENT.

1. The District Court's Relief Is Supported by Precedent.

We start with the proposition that these cases involve repeated violations of constitutional rights in an area of great public concern. The Supreme Court decision that best illustrates the permissible scope of equitable relief in such cases is *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U. S. 1 (1971).

In *Swann* there had been a finding of systematic school segregation, and the principal issue before the Supreme Court was the propriety of the relief. The District Court, after giving the recalcitrant school board several chances to submit a satisfactory desegregation plan, ordered the board to desegregate under a comprehensive plan devised by a court-appointed expert. The Court of Appeals struck down two important mandatory provisions of the District Court's plan. The Supreme Court reinstated these provisions, saying:

> "Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." (402 U. S. at 15)

Justice Stewart's concurring opinion in *Millikin v. Bradey*, 418 U. S. 717, 753-757 (1974), reaffirms *Swann's* holding of the availability of a federal court's broad equitable relief to correct a condition which offends the Constitution, and that ". . . the nature of the violation determines the scope of the remedy."[2] The remedy fashioned by the district court in the case at bar is totally justified by the nature of the constitutional violation found.

2. 418 U. S. at 757, quoting from *Swann*, 402 U. S. at 16.

In the instant cases the District Court found repeated violations of constitutional rights of equal gravity with those involved in *Swann*. Like the District Court in *Swann*, it gave the defendants ample opportunity to mend their ways. Only when this proved unavailing did the District Court establish standards of its own, and in so doing it took pains to assure that they would be reasonable, feasible and workable as required by *Swann*.

The fact that *Swann* grew out of school segregation rather than police oppression is not distinguishing. The Supreme Court said that:

> ". . . a school desegregation case does not differ fundamentally from other cases involving the framing of equitable remedies to repair the denial of a constitutional right. The task is to correct, by a balancing of the individual and collective interests, the condition that offends the Constitution." (402 U. S. at 15-16)

It is well established that Federal courts have the power to enjoin unlawful conduct by police departments. See *Hague v. C. I. O.*, 307 U. S. 496 (1939).

2. The District Court's Order Promotes the Public Interest.

The public interest in improving police-community relations would seem to be self-evident. It has been described by Judge Sobeloff, writing for the Fourth Circuit Court of Appeals *en banc*, thus:

> "The police department is society's instrumentality to maintain law and order, and to be fully effective it must have public confidence and cooperation. Confidence can exist only if it is generally recognized that the department uses its enforcement procedures with integrity and zeal, according to law

and without resort to oppressive measures. Law observance by the police cannot be divorced from law enforcement. When official conduct feeds a sense of injustice, raises barriers between the department and segments of the community, and breeds the disrespect for the law, the difficulties of law enforcement are multiplied." *Lankford v. Gelston*, 364 F. 2d 197, 204 (1966)

The importance of a civilian complaint procedure in achieving good police relations with the black community has been described by a deputy assistant Attorney General of Massachusetts as follows: [3]

"A final element of the blacks' belief in their second-class citizenship is the inadequacy of the present police complaint procedures. The black and the poor, because they have little political influence, are almost never able to exert pressure for intra-departmental disciplining. Therefore the black citizen, when he feels that he has been wronged by the police, must make his protest through police complaint bureaus."

After describing certain obstacles to the filing of complaints not present in the instant case, the author proceeds to describe shortcomings in the disposition of complaints, once they are filed, in words reminiscent of the findings of the District Court:

"Should a citizen overcome these initial obstacles and file a complaint, there is no assurance that his interest will be adequately represented when the complaint is investigated and heard. Furthermore, he is not likely

3. Condlin, "Citizens, Police and Polarization: Are Perceptions More Important Than Facts?", 47 Journal Urban Law 653, at 657-58 (1970).

to learn of the disposition of his case and in most instances will not have the opportunity to appeal an adverse decision to a non-police agency. With these inadequacies, it is not surprising that most black residents feel that it does no good to complain."

With respect to the social consequences of an inadequate complaint procedure that does not command community respect, the author has this to say:

"A dangerous consequence of the closing of grievance channels, however, is that it intensifies the blacks' feeling of alienation and powerlessness. The truly second class citizen is the one who not only is abused by others but who also is incapable of fighting back. Furthermore, the lack of a workable complaint system reinforces the notion that there are no existing structures through which the black man can legitimately prosecute his grievances. Such a lack also supports the proposition that if wrongs are to be redressed they must be done so in an extra-legal fashion. This in turn, adds fuel to a growing philosophy of violence."

The District Court's order is directly responsive to the public interest described by these authorities. It will assure citizens that their complaints will be heard expeditiously, inexpensively and fairly. Furthermore, by mandating a wholly internal procedure, the District Court minimized intrusion upon the police department and adverse effects on police morale. Indeed, as the Court said, its guidelines "afford protection to the accused policeman as well as the complaining civilian."

CONCLUSION.

A review of the District Court's order can lead to only one conclusion: that all citizens of Philadelphia, including policemen, will benefit from the civilian complaint procedure mandated by that Court.

We respectfully urge this Honorable Court to reaffirm the judgment entered by the District Court and affirmed by the Court of Appeals.

Respectfully submitted,

FREDERIC L. BALLARD,
MICHAEL LEHR,
JAMES D. COLEMAN,
1035 Land Title Building,
Philadelphia, Pa. 19110,
Attorneys for Amicus Curiae,
Greater Philadelphia Movement.

Of Counsel:
BALLARD, SPAHR, ANDREWS
& INGERSOLL.